

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11267 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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SHIVRAJSING MANCHHASING                      GIL (SARDAR)

Versus

COMMISSIONER OF POLICE                      AHMEDABAD

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Appearance:

MS DR KACHHAVAH for Petitioner

MR SS PATEL AGP for Respondent No. 1, 2, 3

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 09/08/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

The petitioner challenges the order of preventive detention dated 23rd November, 1998, made by the

Commissioner of Police, Ahmedabad City, under the powers conferred upon him under sub-section (1) of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

The petitioner is alleged to be a 'bootlegger' within the meaning of section 2 (b) of the Act, and his activities are found to be prejudicial to the maintenance of public order. As many as four offences punishable under the Bombay Prohibition Act are registered against the petitioner. Three of them are pending investigation. In each of the said cases, substantial quantity of country liquor was recovered from the possession of the petitioner. Besides, two witnesses, on assurance of anonymity, have given statements in respect of the anti-social activities of the petitioner and its adverse effect on the public tranquility and the even tempo of life.

It is contended that the reports of the chemical examination of the liquor allegedly recovered from the petitioner have not been furnished to the petitioner. The petitioner has, therefore, been unable to make an effective representation against the order of detention. It is also submitted that under his representation dated 7th December, 1998, the petitioner had demanded the copies of the FSL reports. In spite of the said demand made by the petitioner, copies of such reports were not made available to the petitioner. Mr. Patel has submitted that such reports were not relied upon by the Detaining Authority while recording his subjective satisfaction and, therefore, were not required to be furnished to the petitioner. The reports of the chemical examination are necessarily vital documents without which the petitioner could not have made an effective representation. It is not the case that on the date of the detention, such reports were not available. In my view, therefore, the petitioner has been deprived of his right to make an effective representation. The action is, therefore violative of the Constitutional mandate. In the circumstances, the continued detention of the petitioner is illegal.

Petition is, therefore, allowed. The order dated 23rd November, 1998 (Annexure-A to the petition) is quashed and set aside. Rule is made absolute. The petitioner, unless is required to be detained in some

other case, be released forthwith.

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JOSHI